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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1738 of 2004

IN

SPECIAL CIVIL APPLICATION No 3505 of 1992

WITH

CIVIL APPLICATION No 7100 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

and

HON'BLE MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NARESH V MEHROTRI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 1738 of 2004
MR RAJNI H MEHTA for Appellant.
..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 28/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.A.PUJ)

This Letters Patent Appeal is filed under Clause 15 of the Letters Patent Act challenging the judgment and order passed by the learned Single Judge (Coram :- D.A. Mehta, J.) on 29.07.2004 in Special Civil Application No. 3505 of 1992. While dismissing the said writ petition, the learned Single Judge has confirmed the order passed by the Gujarat Civil Services Tribunal, Gandhinagar on 16.03.1992 in Appeal No. 261 of 1991 confirming the order of removal passed by the Disciplinary Authority i.e. Principal, Chief Conservator of Forest, Vadodara on 06.07.1991.

2. It is the case of the appellant - original petitioner that certain trees in the road side plantation on Padra - Jambusar road were cut and fallen by and on instructions of one Mr. Vasant Dhula. The resultant logs of woods were transported to Bhagwan Saw Mill owned by one Mr. Jivrajibhai Shamjibhai in the tractor and trolly of one Mr. Prahaladbhai Ranchhodbhai Mistry on 12/13.06.1988. Panchnamas were drawn at the site as well as logs of woods lying in Bhagwan Saw Mill. Statements of various persons including the labourers involved in the cutting of trees, loading and unloading from the tractor and clerk of the officers of the appellant delinquent were recorded during the course of preliminary inquiry as well as during the course of two separate proceedings of two delinquents, one Mr. J.P. Gohil, a Forester and the appellant. In the departmental proceedings of the co-delinquent, Mr. J.P. Gohil, he was punished by stoppage of one increment for one year with permanent effect whereas in the separate departmental proceedings against the appellant, the inquiry officer found that charge Nos. 2 & 3 were proved and charge No. 1 was not proved. The Disciplinary authority found that all the three charges were proved against the appellant and ordered him to be removed from service by an order dated 06.07.1991. The three charges levelled against the appellant are that :-

- (i) Unauthorised cutting of green trees of road side plantation on Padra Jambusar road with

the help of employee Shri J.P. Gohil, Forester, working under the appellant and thus, using Government property and causing financial loss to the Government for the purpose of obtaining personal gain;

(ii) Creation of false evidence by manipulation of Government record for personal gain and;

(iii) Disobeying the orders of the Superior authority.

The appellant filed an appeal against the order of removal which was dismissed by Gujarat Civil Services Tribunal, Gandhinagar by an order dated 16.03.1992. Being aggrieved by the said order, the appellant preferred S.C.A. No. 3505 of 1992 which was also dismissed by the learned Single Judge of this Court vide judgment and order dated 29.07.2004.

3. It is in the above background, the present L.P.A. is filed before this Court.

4. Mr. Rajni H. Mehta, learned advocate appearing for the appellant has submitted that the order of Disciplinary authority dated 06.07.1991 and the order of the Tribunal dated 16.03.1992 confirming the said order of the Disciplinary authority are based on no evidence and the same were based only on presumptions. The learned Single Judge should have, therefore, interfered in the said orders while exercising the Extraordinary powers conferred under Article 226 and/or 227 of the Constitution of India. He has further submitted that in the separate departmental inquiry proceedings of the appellant, the co-delinquent, namely, J.P. Gohil was not examined as a witness and wrong statements were relied upon by the Disciplinary authority and hence, the entire enquiry proceedings are vitiated. He has further submitted that the inquiry officer and the Departmental authority misguided themselves in coming to a conclusion on 31.05.1990 that the appellant was guilty of the charges by relying on the statement of the co-delinquent, whose trial was held separately and concluded on 30.01.1990. The learned Single Judge has merely relied on the statement of the owner of the Tractor - trailer, Prahladbhai R. Mistry, who has stated that Rs. 300/were paid by the appellant whereas while giving evidence in co-delinquent's separate trial, he has stated that he did not remember who has paid the money. He has, therefore, submitted that the learned Single Judge's sole reliance

on the statement of Prahladbhai Mistry for co-relating charges No. 1 & 2 was wholly erroneous, and the conclusion arrived at by the learned Single Judge based on the statement was, therefore, bad, unjustifiable and not tenable. The inquiry officer, the Disciplinary authority, the Tribunal and the learned Single Judge ignored the fact that witness Vasant Dhula has specifically stated that he cut the trees on his own and he did not know the appellant, and by ignoring this statement completely, there was an apparent error on the face of the record committed by the Inquiry Officer, the Disciplinary authority, the Tribunal and the learned Single Judge. The inquiry officer, the Disciplinary authority, the Tribunal and the learned Single Judge erred completely in not considering the witness, namely, Jivrajbhai Shamjibhai Patel, the owner of the Saw Mill, who has specifically stated that witness Vasant Dhula cut and brought the fallen trees in his saw mill, and that the cut trees were not brought by the appellant. The panchnama and the important documents were drawn in absence of Shri Jivrajbhai Shamjibhai Patel and that resulted in miscarriage of justice. When the co-delinquent was visited with a lighter punishment of stoppage of one increment with permanent effect whereas the appellant was removed from service and thus, there was violation of Article 14 & 16 of the Constitution of India.

5. Mr. Mehta has further submitted that the inquiry officer as well as the Disciplinary authority have taken into consideration the statements recorded during the course of preliminary inquiry and based their finding on such statements. The said action of the inquiry officer as well as the Disciplinary authority is contrary to law and against the settled legal position. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of VIJAY KUMAR NIGAM (DEAD) THROUGH LRS. V/S. STATE OF M.P. AND OTHERS, (1996) 11 SUPREME COURT CASES 599 wherein it is held that the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee.

6. Mr. Mehta has alternatively submitted that punishment imposed on the appellant is excessive and disproportionate in view of the fact that the value of the fallen trees was only about Rs. 4,000/- which amount was recovered from the owner of the Saw Mill. The appellant had an unblemished career for over six years and

the removal of the appellant in service has caused economic death for the appellant and his family. He has, therefore, submitted that while exercising the writ jurisdiction under Article 226 of the Constitution of India, the learned Single Judge should not have confirmed the order of removal but should have considered the alternative submission of the appellant imposing punishment commensurate with the gravity of the offence, particularly keeping in view punishment imposed on the co-delinquent, Mr. J.P. Gohil, Forest Officer, who was chargesheeted along with the appellant. In this connection he relied on the decision of the Hon'ble Supreme Court in the case of B.C. CHATURVEDI V/S. UNION OF INDIA AND OTHERS, A.I.R. 1996 SUPREME COURT 484 wherein it is held that if the punishment imposed by the Disciplinary authority or the Appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the Disciplinary / Appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

7. Mr. Mehta has, therefore, submitted that this Court should admit and allow the present appeal and quash and set aside the orders passed by the Disciplinary authority, Tribunal and the learned Single Judge.

8. We have heard learned advocate appearing for the appellant at length. We have gone through the documents produced before us along with the appeal memo as well as produced with the writ petition before the learned Single Judge. We have gone through the orders passed by the Disciplinary authority, by the Tribunal as well as by the learned Single Judge. We are of the opinion that the learned Single Judge has considered the entire evidence produced before him and dealt with in detail all the submissions made on behalf of the petitioner - present appellant. The learned Single Judge has also discussed the relevant case law on the subject and despite the fact that the order of the Disciplinary authority was merged in the order of the Tribunal, he has examined the legality and validity of the finding arrived at by the Disciplinary authority and came to the conclusion that the doctrine of merger applies with full force in the facts of the case and, therefore, the only question that would survive is as to whether the impugned judgment of the Tribunal suffers from any patent error to permit him to exercise the jurisdiction under Article 227 of the Constitution of India. Learned Single Judge has further held that charge Nos. 1 & 2 are not only inter-linked

but have a direct bearing on the final conclusion in the departmental proceedings. The inquiry officer has failed to appreciate the connection between the two, while the Disciplinary authority has considered the same. The charge No. 2 pertains to manipulation of Govt. record, namely, outward register wherein entry No. 111A was interpolated between entry numbers 111 & 112. The inquiry officer records finding that this was done to ensure that communication of first information report which was belated viz. made on 17.06.1988 was sought to be shown as having been made on 11.06.1988 because that was the date on which the report had been prepared. This was obviously done with a view to show that the delinquent petitioner had acted in furtherance of the responsibility cast on him to protect the government property viz. the road side plantation trees. However, admittedly, the same had already been cut, fallen and transported to Bhagwan Saw Mills on 15.06.1988 as recorded in the panchnama. Thus, with a view to save his own skin the petitioner delinquent had sought to manipulate the government records and interpolated the entries in the register as deposed by Shri Malik, the Clerk of the office of the petitioner. Once the Departmental Inquiry Officer had accepted this position, based on evidence on record, the immediate question that would arise is : as to why was the petitioner required to create such a false evidence by interpolating entry in the government records? It is further observed by the learned Single Judge that it is obvious from the statement of Shri Prahladbhai Ranchhodbhai Mistry, owner of the Tractor that the petitioner had paid Rs. 300/- to the said witness for transporting the fallen trees from the road side to Bhagwan Saw Mills. This statement not only remained unshaken but got confirmed in the cross-examination undertaken on behalf of the petitioner when Shri Prahladbhai Ranchhodbhai Mistry specifically stated that the payment was made at the rate of Rs. 100/per trip and the fallen trees were transported in three trips. Considering this aspect of the matter, the learned Single Judge has rightly observed that the Disciplinary authority was fully justified in issuing show-cause notice to the petitioner, and after considering the explanation tendered, in passing the impugned order dated 06.07.1991 which was confirmed by the Tribunal vide judgment dated 16.03.1992. He has, therefore, come to the conclusion that the scope of the interference was very limited and the Court cannot arrive at an independent finding after reweighing the evidence as contended on behalf of the petitioner and, therefore, the orders passed by the authorities were confirmed and the petition was dismissed.

9. While considering the above finding and the conclusion arrived at by the learned Single Judge, we do not see any infirmity in the impugned order and judgment. On the contrary, it gives answer to the plea raised on behalf of the appellant before us. The case of the appellant is not similar to one of Mr. Gohil as there was no such charge with regard to manipulation of the entries in the government record. The appellant being the Senior Officer in the department should not have interpolated any entry just to save his own misdeed. This aspect cannot be taken lightly. Even otherwise, while passing the order of removal, the Disciplinary authority has not merely taken into consideration the statement recorded during the course of preliminary inquiry. Coupled with other evidence, the Disciplinary authority has arrived at the conclusion and this being concurrent finding of fact by all the authorities and/or Court, the scope and ambit of the jurisdiction to be exercised by the appellate Court under Clause 15 of the Letters Patent Act is very limited. The authorities cited by Mr. Mehta would not lead his case any further. It is difficult for us to arrive at the conclusion that punishment inflicted is disproportionate to the guilt committed.

10. Taking over all view of the matter and considering the facts and circumstances of the case, we are of the opinion that there is no infirmity in the order passed by the learned Single Judge which calls for any interference by this Court.

11. We, therefore, dismiss the appeal at the very threshold.

12. In view of the dismissal of the appeal, no order in Civil Application No. 7100 of 2004 and is accordingly disposed of.

[A.R. DAVE, J.]

[K.A. PUJ, J.]

#Savariya#
